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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/349,737	07/08/1999	DEAN R. SHACKLETT	99-40132-US	7065

7590

09/12/2002

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EXAMINER

PRATT, CHRISTOPHER C

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 09/12/2002

15

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/349,737

Applicant(s)

SHACKLETT ET AL.

Examiner

Christopher C. Pratt

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-9, 14-19, 58 and 60-75 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 2-9, 14-19, 58 and 60-75 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. Applicant's declaration, amendments, and accompanying remarks filed 7/30/02 have been entered and carefully considered. Applicant's amendment is not found to overcome the 112 indefinite rejections set forth in the previous action. The previous 103 rejection has been modified so that the best prior art can be made of record; however, Applicant's arguments are not found persuasive of patentability for reasons set forth herein below.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2-9, 14-19, 58, 60-75 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 58, 63, and 74 are indefinite because of the phrase "degradation resistant...over extended time." Applicant has merely restated the same indefinite phrase and, therefore, the reasons for indefiniteness set forth in the previous actions still apply. Is this claimed property inherent from the combination of materials used in the invention or does applicant achieve said property from an additional material or process step not claimed. If the property is inherent then the limitation is redundant and unnecessary.

Applicant argues that the term "extended time" means "indefinitely" (p. 8, line 2 of applicant's response). If applicant intends the meaning of this phrase to

be that the fabric will never degrade, then the claims may be subject to 112 first paragraphs rejections because the originally filed specification does not teach a fabric which will resist degradation from all materials throughout time.

Applicant argues that the instant invention is durable and tear resistant. However, these properties are relative and have no definite meaning unless they are quantified with experimental data.

The term "substantially non-leaching" in claims 17 and 58 is a relative term which renders the claim indefinite. This term is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

In response to applicant's question, the other claims listed in this particular rejection are only indefinite because they depend from an indefinite claim.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-9, 14-19, 58, 60-75 rejected under 35 U.S.C. 103(a) as being unpatentable over either McFarland et al (6096412) or Schleinz et al (5458590) in view of either Dainippon (JP-63091243A), Hayashi (5776854), or Morikawa et al (6161928) and Desie et al (5984443).

As set forth in the previous action McFarland and Schleinz both teach printing inks on at least one side of a nonwoven absorbent material. Said material comprising cellulose or polyester and blends thereof. McFarland and Schleinz fail to teach using applicant's claimed vehicle.

Dainippon, Hayashi, and Morikawa are all concerned with printing inks on nonwoven substrates. All teach the use of applicant's claimed vehicles (abstract; col. 1, lines 24-27 and col. 5, lines 21-23; col. 12, lines 1-15, respectively). It would have been obvious to a person having ordinary skill in the art to utilize the vehicles taught by Dainippon, Hayashi, and Morikawa in the dyes of McFarland and Schleinz. Such a combination would have been motivated by the desire to provide the ink with a more uniform dispersion and improved mechanical strength.

Applicant argues that "no specificity is provided that one of skill in the art would have combined, or would have been motivated to combine" the references set forth by the examiner. However, as previously set forth the motivation is the desire to achieve more uniform ink dispersion and improved mechanical strength.

The combination set forth above does not seem to specifically teach printing both sides of a substrate in register. Desie teaches printing both sides of a web in register (col. 8, lines 50-65). It would have been obvious to a person having ordinary skill in the art to utilize the printing process of Desie to print the web created by the combination of McFarland or Schleinz and Dainippon, Hayashi, or Morikawa. The skilled artisan would have been motivated to select

the printing process of Desie by the desire to achieve high quality printing at higher speeds.

It would have been obvious to vary the size, shape and thickness of the nonwoven material for the reasons set forth in the last two action.

Applicant has submitted a declaration stating that there was a long felt need for a fabric pad having print thereon in registration. The examiner has cited Desie as a teaching that printing webs in registration is common and well-known in the art. The examiner also notes that applicant's hasn't met the burden of showing that the supposed long felt need was persistent or that it was recognized by those of ordinary skill in the art. Applicant states that the requesting company and its competitors recognized a long felt need; however, no statement from the requesting company or its competitors has been provided.

Said declaration also states that the pad of the instant invention has proven commercially successful. This statement does not meet the requisite burden of providing "hard evidence" of commercial success (see MPEP 716.03). Also, applicant has not attempted to establish a nexus between the claimed invention and evidence of commercial success.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher Pratt whose telephone number is 703-305-6559. The examiner can normally be reached on Monday - Friday from 7 am to 4 pm.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

Christopher C. Pratt
September 9, 2002



CHERYL A. JUSKA
PRIMARY EXAMINER